

Message Text

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ACTION L-03

INFO OCT-01 EA-07 ISO-00 PM-05 CIAE-00 INR-07 NSAE-00
/023 W

-----076969 260730Z /21

P 260622Z JUL 77

FM AMEMBASSY MANILA

TO SECSTATE WASHDC PRIORITY 2819

SECDEF WASHDC PRIORITY

INFO DEPT JUSTICE WASHDC PRIORITY

NAVY JAG WASHDC PRIORITY

CINCPAC PRIORITY

CINCPACFLT PRIORITY

COMNAVBASE SUBIC PRIORITY

NAVLEGSVCOFF SUBIC PRIORITY

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JUSTICE FOR RISTAU, FOREIGN LITIGATION UNIT

E.O. 11652: N/A

TAGS: ACLM

SUBJECT: NEGRITO TRIVE CASES

REF: (A) COMNAVBASE MSG 291035Z JUN 77 (NOTAL),
(B) COMNAVBASE MSG 010306Z JUL 77 (NOTAL)

1. ON 20 JULY 1977 EMBASSY RECEIVED TWO DEPARTMENT OF FOREIGN
AFFAIRS (DFA) NOTES FORWARDING CIVIL CASES 2197-0 AND 2198-0.

2. CASE 2197-0 WAS ORIGINALLY FILED ON 23 JUNE 1977 AND NAMED
AS DEFENDANTS THE U.S.A. AND ADMIRAL KILCLINE BEING SUED IN HIS
OFFICIAL CAPACITY AS COMUSNAVBASE AND CAPTAIN CONNER BEING SUED
IN HIS OFFICIAL CAPACITY AS COMMANDER OF THE NAVY PUBLIC WORKS
CENTER. AN AMENDED COMPLAINT WAS FILED ON 28 JUNE 1977 WHICH
NAMES ONLY THE U.S. AS DEFENDANT BUT MAKES NUMEROUS REFERENCES
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TO THE PREVIOUSLY INDIVIDUALLY-NAMED DEFENDANTS IN THE
FACTUAL ALLEGATIONS.

3. PLAINTIFF IS SUING INDIVIDUALLY IN HIS CAPACITY AS OVER-
ALL CHIEF OF THE THREE NEGRITO TRIBES OF KALAYAAN, BOTON
AND BINICTICAN. COMPLAINT ALLEGES THAT ABOUT TWENTY YEARS
AGO THE NAVY DISPOSSESSED THE NEGRITOS OF THEIR ANCESTRAL

LANDS AND ENTERED INTO A CONTRACT GIVING THE NEGRITOS THE RIGHT AND CONCESSION TO PICK, GATHER AND SELL "SCRAPS AND SALVAGEABLE MATERIALS" FROM THE NAVAL BASE TO PARTIES OF THEIR CHOICE; THAT ENTERING SAID CONTRACT IMPLIES CONSENT TO BE SUED; THAT DURING LATER YEARS OF THE IMPLEMENTATION OF THE CONTRACT THE NAVY MALICIOUSLY CAUSED THE DELIVERY OF PURE GARBAGE INSTEAD OF SCRAPS AND SALVAGEABLE MATERIALS WITH INTENT TO STARVE THE NEGRITOS, AND IN APRIL OF THIS YEAR THE NAVY COMPLETELY DEPRIVED THE NEGRITOS OF ALL BENEFITS UNDER THE CONTRACT.

4. COMPLAINT ASKS FOR SPECIFIC PERFORMANCE AND COMPENSATION FOR: DEPRIVATION OF USE OF AND DESTRUCTION OF FRUIT TREES, 25 MILLION PESOS; FOR CUTTING ANCESTRAL TIMBER INCLUDING DIVERSION OF SAWN LUMBER TO NAVAL BASES OUTSIDE OF THE PHILIPPINES, ONE BILLION PESOS; AND ATTORNEY'S FEES, 500,000 PESOS.

5. CASE 2198-0 FILED ON 23 JUNE 1977 BY SAME PLAINTIFF IN SAME CAPACITY IS AGAINST ADMIRAL KILCLINE AND CAPTAIN CONNER IN THEIR INDIVIDUAL AND PERSONAL CAPACITIES. FACTUAL ALLEGATIONS ARE SIMILAR TO 2197-0 BUT NO MENTION IS MADE OF FRUIT TREES AND ANCESTRAL TIMBER. COMPLAINT ALLEGES THAT DEFENDANTS TRIED TO COERCE PLAINTIFF NEGRITOS INTO GIVING UP PRIOR ARRANGEMENTS AND ACCEPTING JOBS AS GARBAGE SORTERS AT 96 PESOS PER MONTH BY DELIVERING ONLY PURE LIMITED OFFICIAL USE

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GARBAGE TO THE DUMP INSTEAD OF THE AGREED UPON SCRAP AND SALVAGEABLE MATERIALS. THIS SUIT ASKS FOR 5.0 MILLION PESOS MORAL DAMAGES; 100,000 PESOS EXEMPLARY DAMAGES; AND ATTORNEY'S FEES OF 100,000 PESOS.

6. IN BRIEF DISCUSSION OF THIS MATTER DURING CALL ON SOLICITOR GENERAL MENDOZA ON 22 JULY 1977, HE ADVISED THAT USG MAY WANT TO INVOLVE GOP AS DEFENDANT AND IF SO, USG SHOULD CONSIDER SUGGESTING TO DFA THAT GOP IS, AT LEAST AS TO SOME OF THE ALLEGATIONS, A NECESSARY AND INDISPENSABLE PARTY TO THE ACTION. HE ALSO ADVISED THAT IF USG PLANNED TO DEFEND SUIT ON BASIS OF SOVEREIGN IMMUNITY, AS HE EXPECTED, IT COULD ANTICIPATE GOP RECIPROCAL APPLICATION OF THE U.S. FOREIGN SOVEREIGN IMMUNITIES ACT.

7. IN EMBASSY'S VIEW, GOP SHOULD BE NAMED DEFENDANT AS THE OWNER OF THE LAND WHICH THE U.S. USES UNDER THE TERMS OF THE RP/US MILITARY BASES AGREEMENT. IF DEPARTMENT CONCURS, EMBASSY PLANS TO REPLY TO DFA NOTE FORWARDING CIVIL CASE 2197-0 ALONG FOLLOWING LINES:

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FM AMEMBASSY MANILA

TO SECSTATE WASHDC PRIORITY 2820

SECDEF WASHDC PRIORITY

INFO DEPT JUSTICE WASHDC PRIORITY

NAVY JAG WASHDC PRIORITY

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JUSTICE FOR RISTAU, FOREIGN LITIGATION UNIT

QUOTE - THE EMBASSY WISHES TO CALL TO THE ATTENTION OF THE DEPARTMENT OF FOREIGN AFFAIRS THAT THE PLAINTIFFS IN THE CASE IN QUESTION ALLEGED THEMSELVES TO BE OR TO HAVE BEEN THE RIGHFUL OWNERS OF THE LAND AND TO HAVE SUFFERED FROM THE UNITED STATES NAVY'S USE OF THAT LAND PROVIDED TO THE UNITED STATES NAVY AND USED BY IT IN ACCORDANCE WITH THE TERMS OF THE MILITARY BASES AGREEMENT. IT APPEARS FROM THE PLEADINGS THAT THE REPUBLIC OF THE PHILIPPINES HAS AN IMPORTANT INTEREST IN THE PROCEEDINGS AND MAY, IN FACT, BE A NECESSARY AND INDISPENSABLE PARTY THERETO. THE EMBASSY WOULD THEREFORE SUGGEST THAT THE DEPARTMENT MAY WISH TO CONSIDER REFERRAL OF THIS SUIT TO THE OFFICE OF THE SOLICITOR GENERAL FOR REVIEW AND WHATEVER ACTION MAY BE DEEMED APPROPRIATE TO PROTECT THE INTERESTS OF THE REPUBLIC OF THE PHILIPPINES. COPIES OF THE PLEADINGS IN THIS CASE AND IN THE RELATED CIVIL CASE NO. 2198-0 ARE PROVIDED HEREWITH FOR THE LIMITED OFFICIAL USE

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DEPARTMENT'S INFORMATION AND SUCH ACTION AS THE DEPARTMENT

MAY CHOOSE TO TAKE. END QUOTE.

8. EMBASSY CONCURS IN REFTEL RECOMMENDATION OF DEFENSE BASED
ON SOVEREIGN IMMUNITY AND BELIEVES IT WILL BE ACCEPTED BY
COURT UNDER RECIPROCAL APPLICATION OF U.S. FOREIGN SOVEREIGN
IMMUNITIES ACT. EMBASSY ALSO CONCURS IN REFTEL RECOMMENDATION
FOR RETENTION OF LUNA FIRM AS MOST CAPABLE TO DEAL WITH
JURISDICTIONAL QUESTIONS RAISED BY UNUSUAL SUIT AS WELL AS
DEFENSE OF IMMUNITY FOR OFFICIAL ACTS IN CIVIL CASE NO.

2198-0.

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Message Attributes

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Disposition Date: 22 May 2009
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